

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

KENNETH BROWN and MARK BARON, Individually and for Other Similarly Situated,)	
)	
)	Case No. 3:21-cv-611
v.)	
)	Jury Trial Demanded
)	
ENERGY SERVICES GROUP INTERNATIONAL, INC.)	
)	
)	
)	
)	

MOTION TO DISMISS UNTIMELY CONSENTS

Defendant, Energy Services Group International, Inc. (“ESGI”), by counsel, pursuant to Rule 6(b)(1)(B) of the Federal Rules of Civil Procedure, respectfully moves to dismiss the opt-in consent forms of putative class members, filed by the Plaintiffs after March 11, 2022 as untimely and in violation of the Court’s Order of Notice [ECF 38]. ESGI states as follows in support of its Motion to Dismiss:

1. On November 22, 2021, Plaintiffs Kenneth Brown and Mark Baron, on behalf of themselves and others similarly situated, filed their First Amended Complaint [ECF 24].
2. On December 13, 2021, the Court granted the Plaintiffs’ motion to conditionally certify a collective action and authorized the issuance of a Court-approved notice to potential class members. [ECF 31 and 32].
3. The Court, by order, granted Putative Class Members sixty (60) days from the date of mailing to return their signed Notice and Consent Forms to Plaintiffs’ Counsel for Filing. [ECF 38]. The agreed date of mailing was January 10, 2022. Accordingly, Plaintiffs’ counsel had until March 11, 2022 to file any consent forms with the Court. [ECF 36 and 38].

4. The Court-approved notice clearly advised putative class members that the “Court-imposed deadline for filing is March 11, 2022.” [ECF 64-1].

5. As of March 11, 2022, Plaintiffs’ counsel filed forty-eight (48) opt-in consent forms, and there are fifty (50) total named Plaintiffs, including the two original Plaintiffs Brown and Baron.

6. After the close of the opt-in period, Plaintiffs filed two additional opt-in consent forms. [ECF 60-1 and 64-1].

7. Plaintiffs did not offer any explanation as to why these forms were filed late, nor did the Plaintiffs seek permission from the Court to file these late forms.

8. Because these forms were filed after the expiration of the opt-in period and failing to close the class according to the Court’s Notice Order [ECF 38] will substantially prejudice Defendant’s ability to prepare for trial, ESGI respectfully requests the Court grant this Motion to Dismiss.

WHEREFORE, for these reasons and those set forth in the Memorandum in Support, Defendant requests the Court grant this Motion to Dismiss.

Dated: March 28, 2022

Respectfully submitted,

**ENERGY SERVICES GROUP
INTERNATIONAL, INC.**

By Counsel

/s/ Joan C. McKenna

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*Counsel for Defendant Energy Services
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to counsel of record.

/s/ Joan C. McKenna
Joan C. McKenna (VSB No. 37812)